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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER

RIGGLEMAN, JASON PAUL

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1792

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/573,457
Filing Date: March 24, 2006
Appellant(s): JERG, HELMUT

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/7/2010 appealing from the Office action mailed 8/17/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller et al. (EP 1057445).

Miller et al. teaches a dishwasher having a washing container for receiving items. A circulatory pump circulates a rinsing liquid into the container. A comminution device (blade 254) is driven by, operatively interconnected with, and effected by, the pump impeller (230), Fig. 3. A safety-friction clutch, connection of drive shaft second end (258b) with extension (260), by engaging teeth, is taught wherein the drive coupling between the comminution device and pump is made by the “clutch”, paragraph [0023]. The comminution device and pump are interconnected such that drive coupling is axially displaceable (can be detached). The connecting shaft is axially displaceable *into engagement* with the pump (is attached during assembly) such that the coupling is broke “as desired” by means of axial displacement of the shaft out of engagement with the pump (is detachable), paragraph [0024]. The “chopping assembly can connect directly to the impeller 230”; therefore, the connecting shaft between the comminution device and pump is selectively couplable to the hub of the impeller of the pump, paragraph [0024], Fig. 3.

(10) Response to Argument

The previous 112, second paragraph, rejection of claim 11 is withdrawn in view of the Appellant's arguments. For purposes of examination, the clutch is assumed to be any element which – “a coupling used to connected and disconnect a driving and a driven part”, pg. 7, 1st paragraph of Appellant's Brief.

In regards to claim 11, the Appellant is attempting to read limitations into the claims by stating that the limitation of “the comminution device is driven temporarily” *means* “for switching the comminution device on an off as required”, pg. 10, 3rd paragraph. Examiner stated that “temporarily driven” was vague only to indicate to the Appellant that the limitation is very broad and can be construed broadly during examination. No 112 rejection is being made on claim 11.

The Appellant states that claim 11 recites “a comminution device rinsing residue, in which the comminution device and the circulatory pump are operatively interconnected in a manner that the comminution device is temporarily driven by the circulatory pump”.

The Appellant argues that the comminution device and the circulatory pump are “permanently rotatably engaged and driven. The device of the Miller et al. reference does not decouple or disengage the driving of the comminution device from the circulatory pump *during operation of the pump*. Indeed, the Miller et al. reference does not disclose anything that is remotely close to operating the circulatory pump with the comminution device disengaged or decoupled from the pump”, pg. 10, 3rd paragraph.

The Appellant argues that Miller et al. “*when read in the context of the Miller et al. reference as a whole*” the “detachable coupling” between second end (258b) and drive extension

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(260) remains operatively rotatably engaged with the driven extension (260) irrespective of the tolerance T, pg. 11, 4th paragraph.. The Appellant points to the fact that Miller et al. drive extension (260) and second end (258b) permits axial tolerance of the drive extension during operation, paragraph [0029] of Miller et al.

In regards to the Appellant's claim 11 arguments, Examiner states that the arguments of the Appellant are not commensurate in scope with the claims. The claims require that an apparatus in which “a comminution device rinsing residue, in which the comminution device and the circulatory pump are operatively interconnected in a manner that the comminution device is temporarily driven by the circulatory pump”. Examiner states that the claims are broadly written and the fact that the comminution device can be disassembled (detached/decoupled) from the pump impeller anticipates the claim. Claim 11, as drafted, does not require the device of the Miller et al. to decouple or disengage the driving of the comminution device from the circulatory pump *during operation of the pump* – this argument is moot. Examiner also states that the reference teaches that the comminution end (258b) is designed to “detachably couple” with a drive extension (260), see paragraphs [0023]-[0024] of Miller et al. Examiner maintains that comminution device and circulatory pump is such that the device is temporarily driven by the pump. The Appellant argues that the pump and device of Miller et al. are permanently engaged and thus not “temporarily driven”. Examiner states that no structural feature is being claimed by the limitation of "temporarily driven"; therefore, it appears to be intended use and the device of Miller et al. is capable as such since the chopper can be detached, see paragraph [0024].

In regards to claim 14, the Appellant argues that Miller et al. does not teach that “the comminution device and the circulatory pump are operatively interconnected such that a drive

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coupling between the comminution device and the circulatory pump is made by means of a connecting shaft that is selected one of a axial displaceable and non-axially displaceable".

Appellant argues that Miller et al. does not teach "that the comminution device is disengaged from the drive extension 260 at any time after these parts are assembled", pg. 13, 1st paragraph. Once again, Examiner states that the arguments of the Appellant are not commensurate in scope with the claims. Examiner states that the claims only require that the drive coupling is either axial displaceable OR non-axially displaceable. Miller et al. teaches an axially displaceable drive coupling – both in teaching a detachable coupling and in teaching an axial tolerance.

In regards to claim 15, the Appellant argues that Miller et al. does not teach that the connecting shaft is axially displaceable with the pump such that the coupling is broken as desired by means of axial displacement of the shaft out of engagement with the pump. The Appellant argues that the detachable coupling is such that it permits axial tolerance T but not disengagement of the second end (258b) from the drive extension (260). Examiner states that claim 15 reads on assembling the device and then taking apart and the device, irrespective of the teachings of axial tolerance, and the apparatus of Miller et al. is capable of being assembled and disassembled.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

/Jason P Riggleman/

Examiner, Art Unit 1792

Conferees:

/Michael Barr/

Supervisory Patent Examiner, Art Unit 1792

/Christine Tierney/

Supervisory Patent Examiner, Art Unit 1700